

BOARD OF APPEALS CASE NO. 5355

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BEFORE THE

APPLICANT: Vaughn Hamilton

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ZONING HEARING EXAMINER

REQUEST: Expansion of a non-conforming building; 4004 Gravel Hill Road, Havre de Grace

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 5/21/03 & 5/28/03

HEARING DATE: July 30, 2003

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Record: 5/23/03 & 5/3/03

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Vaughn Hamilton, is requesting a variance pursuant to Section 267- 21 of the Harford County Code, to allow an extension of a porch on a non-conforming building in an Agricultural District.

The subject parcel is located at 4004 Gravel Hill Road, Havre de Grace, Maryland 21078, in the Second Election District, and is more particularly identified on Tax Map 44, Grid Number 2A, Parcel 102. The parcel contains 0.95 acres more or less.

The Applicant, Vaughn Hamilton, appeared and testified that he is the owner of the subject property. He also indicated that he had read the Department Planning and Zoning's Staff Report, and had no additions, changes or corrections to the information contained therein. The witness stated that his property is a corner lot, located at the intersection of Gravel Hill and Paradise Roads. The existing dwelling, which fronts on Gravel Hill Road, sits 60 feet off that road, and 160 feet from Paradise Road. According to the witness, the property slopes downward from Gravel Hill Road toward the front of his dwelling. His front yard is also lower than the vacant lot next door. This lower elevation causes flooding in his basement during periods of inclement weather. The Applicant is proposing to re-grade his front yard to prevent water from leaking into the basement. He is also planning to demolish the existing front porch, and is requesting a variance to construct a new 10 foot by 45 foot patio in its place.

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The property is improved by a 1-1/2 story dwelling built in 1936, a gravel driveway, a one car detached garage, which is also scheduled to be torn down and replaced, and an existing well and septic system. Mr. Hamilton testified that he is not proposing to create a less restricted, or more intense use of the property. He agreed with the Department of Planning and Zoning's calculations regarding the gross square footage of the existing building and the proposed extension. The witness stated that although he is unaware of the height of the existing dwelling, the proposed construction will be a flat patio, located only 2 feet above ground level.

Mr. Hamilton then described several photographs designated as Attachment 6 to the Department of Planning and Zoning Staff Report. The first and second photographs show the existing patio which Applicant plans to demolish. The third photograph shows the downward slope of his front yard. Finally, Mr. Hamilton testified that the outside edge of the proposed patio would be 30 feet from the traveled portion of Gravel Hill Road, and that the structure would have no adverse impact on either the road, or any neighboring properties.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. According to the witness, the existing dwelling is a valid non-conforming building, which was constructed prior to the enactment of Harford County zoning. He stated that the proposed patio will neither change the present use of the property, nor result in a 50% expansion in the size of the existing dwelling.

According to McClune, the Department found that all provisions of Section 267-21 can be met if the subject application is approved. He also testified that the Department had considered all factors set forth in Section 267-9I of the Harford County Code. The witness further stated that the Department of Planning and Zoning had determined that the proposed use would cause no adverse impact to any adjacent properties, because it will be similar to other structures found within area. Mr. McClune then testified that because the proposed patio will be 30 feet from Gravel Hill Road, it will not cause any impact to traffic on that road.

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Finally, Mr. McClune verified that the Department of Planning and Zoning had recommended approval of the subject request in its June 11, 2003 Staff Report.

No witnesses appeared in opposition to the requested variance.

CONCLUSION

The Applicant, Vaughn Hamilton, is requesting a variance, pursuant to Section 267- 21, of the Harford County Code, to allow an extension of a porch on a non-conforming building in an Agricultural District.

The following is a review of applicable code sections, and the Hearing Examiner's findings (*in italics*) regarding each code provision:

Section 267–21 of the Harford County Code provides:

The Board may authorize the extension or enlargement of a non-conforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less restricted and more intense use.

The Hearing Examiner finds that the proposed patio would not change the existing use of the property.

- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.

The main floor of the existing non-conforming structure is approximately 7,312 sq ft. In addition, a portion of the basement and the second floor are used for residential purposes. The proposed patio would be 10 feet by 45 feet (approximately 400 sq. ft.) However, the open patio would not constitute living space, and the expansion would therefore not exceed 50% of the gross square footage in use at the time of the creation of the non-conformity.

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- C. The enlargement or extension does not violate the height or coverage regulations for the district.

The Hearing Examiner adopts the Department of Planning and Zoning's findings that the proposed expansion would not violate the height or coverage regulations for the district.

- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.

The proposed patio would be located 30 feet from the traveled portion of Gravel Hill Road. The Hearing Examiner finds that the proposed expansion would have no impact on either traffic, or site distance along Gravel Hill Road. In addition, because the proposed patio is similar to others commonly found in the area of the subject property, the proposed extension would have no adverse impact on adjoining properties.

- E. The limitations, guides and standards set forth in Section 267-9I, Limitations, Guides and Standards, are considered by the Board.

The provisions contained in Section 267-9I are discussed infra.

Section 267-9I of the Harford County Code provides:

Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

The Hearing Examiner finds that the request would have no impact on persons living or working in the area of the subject property.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks

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and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The Hearing Examiner finds that the proposed extension would not adversely affect traffic conditions on either Gravel Hill, or Paradise Roads.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The Hearing Examiner finds that expansion of the existing structure would have no impact on the growth of the neighborhood or the community, and no fiscal impact on the county.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

The proposed patio would not cause any odors, dust, gas, smoke, fumes, vibration, glare or noise.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The proposed patio would have no impact on public facilities, or the County's ability to supply such services.

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- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The Applicant's front yard slopes downward from Gravel Hill Road toward the existing dwelling. The home is one foot lower in elevation than the road. It is also lower in elevation than the vacant lot next to Applicant's property. This decrease in elevation causes rainwater to flood Applicant's basement during periods of inclement weather. The Applicant is proposing to grade his front yard to prevent water from leaking into his basement. He also proposes to tear down the existing front porch, and replace it with a new patio extending across the entire front of his dwelling. The Hearing Examiner finds that the prevention of water damage to an existing home is consistent with generally accepted engineering and planning principles and practices. In addition, the Hearing Examiner accepts the Department of Planning and Zoning's finding that, "[t]he dwelling is a valid nonconforming structure"...and that the proposed "porch/patio is consistent with other structures in the area."

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

Not applicable to the request.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The Hearing Examiner accepts the Department of Planning and Zoning's conclusion that, "[t]he request has no impact on the intent of the Master Plan."

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

Not applicable to the request.

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(10) The preservation of cultural and historic landmarks.

Not applicable to the request.

Having found that the subject request meets or exceeds all requirements of both Section 267-21 and Section 267-9I, the Hearing Examiner recommends approval of Applicant's request for expansion of a non-conforming use, subject to the condition that the Applicant shall obtain all necessary permits and inspections for the proposed construction.

Date SEPTEMBER 5, 2003

Rebecca A. Bryant
Zoning Hearing Examiner